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Dkt No. 40441-C1Y/JPW/AJM/CY

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Walter P. Carney et al.

Serial No. : 08/488,180 Examiner: S.J. Huff

Filed : June 7, 1995 Group Art Unit: 1642

For : DETECTION AND QUANTIFICATION OF NEU RELATED
PROTEINS IN THE BIOLOGICAL FLUIDS OF HUMANS1185 Avenue of the Americas
New York, New York 10036
February 5, 2004Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450**Mail Stop AF**

Sir:

COMMUNICATION REQUESTING WITHDRAWAL OF FINALITY UNDER 37
C.F.R. §1.129(a) AND CONSIDERATION OF A FIRST SUBMISSION

This Communication is submitted pursuant to the provisions of 37 C.F.R. §1.129(a) to request withdrawal of finality of the Final Office Action issued June 6, 2003 in connection with the above-identified application and consideration on the merits of an Amendment, attached hereto as **EXHIBIT 1**, as a first submission.

A Final Office Action was issued on June 6, 2003 in connection with this application. Applicants filed a Communication In Response To June 6, 2003 Final Office Action on October 6, 2003 with a Petition For A One-Month Extension Of Time. The Examiner issued an Advisory Action on October 27, 2003. In the Advisory Action, the Examiner stated applicants' response has been considered but was not deemed to place the application in condition for allowance. On December 5, 2003, applicants filed a

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Notice of Appeal From The Examiner's Decision To The Board of Patent Appeals And Interferences and a Petition For An Additional Two-Month Extension Of Time. Therefore, an Appeal Brief is due February 5, 2004. Instead of an Appeal Brief, applicants are filing this Communication. As the subject application is pending, this Communication is being timely filed.

The fee under 37 C.F.R. §1.17(r) for withdrawal for finality and consideration and entry of a first submission after a final rejection is SEVEN HUNDRED AND SEVENTY DOLLARS (\$770.00) for a large entity. Applicants enclose a check for this amount.

Under 37 C.F.R. §1.129(a), in an application that has been pending for at least two years as of June 8, 1995, taking into account any reference made in such application to any earlier filed application under 35 U.S.C. §§120, 121 and 365(c), applicants are entitled to have the finality of a final rejection withdrawn and a first submission entered and considered on the merits after final rejection if the first submission and the fee set forth in 37 C.F.R. §1.17(r) are filed prior to the filing of an appeal brief and prior to abandonment of the application. Applicants hereby file this Communication prior to the filing of an appeal brief and prior to abandonment of the subject application. Accordingly, this Communication is being timely filed.

The earliest claimed priority date of the subject application is June 4, 1986. Hence, under 37 C.F.R. §1.129(a), the finality of the June 6, 2003 final

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rejection is automatically withdrawn upon the timely filing of the annexed first submission and the enclosed payment of the fee set forth in §1.17(r). Accordingly, applicants respectfully request consideration of the annexed Amendment as a first submission.

If a telephone conference would be of assistance in advancing prosecution of the subject application, applicants' undersigned attorney invites the Examiner to telephone him at the number provided below.

No fee, other than the enclosed \$770.00 fee, is deemed necessary in connection with the filing of this Communication. However, if any additional fee is required, authorization is hereby given to charge the amount of such fee to Deposit Account No. 03-3125.

Respectfully submitted,

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I hereby certify that this correspondence is being deposited this date with the U.S. Postal Service with sufficient postage as first class mail in an envelope addressed to:
Commissioner for Patents
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Alexandria, VA 22313-1450

2/5/07
Date

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